

2-4-2010

Submission of Deposition Testimony by George C. Sneller 07-2-02323-2-160

Follow this and additional works at: <https://digitalcommons.law.uw.edu/king>

Recommended Citation

"Submission of Deposition Testimony by George C. Sneller" 07-2-02323-2-160. *King County Superior Court Documents*. 173.
<https://digitalcommons.law.uw.edu/king/173>

This Deposition is brought to you for free and open access by the School Finance Litigation: McCleary v. State of Washington at UW Law Digital Commons. It has been accepted for inclusion in King County Superior Court Documents by an authorized administrator of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

BEST IMAGE POSSIBLE

FILED
KING COUNTY, WASHINGTON

FEB 04 2010

SUPERIOR COURT CLERK
BY NANCY L. SLYE

THE HONORABLE JOHN P. ERLICK

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

MATHEW & STEPHANIE McCLEARY,
on their own and on behalf of KELSEY &
CARTER McCLEARY, their two children
in Washington's public schools;
ROBERT & PATTY VENEMA, on their
own behalf and on behalf of HALIE &
ROBBIE VENEMA, their two children in
Washington's public schools; and
NETWORK FOR EXCELLENCE IN
WASHINGTON SCHOOLS ("NEWS"), a
state-wide coalition of community groups,
public school districts, and education
organizations,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

NO. 07-2-02323-2 SEA

SUBMISSION OF DEPOSITION
TESTIMONY BY GEORGE C.
SNELLER

The parties offer into Evidence the following deposition testimony designations and exhibits, corresponding objections and attached pages from the June 3, 2009, deposition transcript for trial witness George C. Sneller:

I. Petitioners' Deposition Designations (transcript highlighted in yellow):

Cover page (page 1)

Appearances page (page 2)

In addition to the portions of the deposition transcript designated by Respondent, Petitioners designate the following:

Page:Line Range	Trial Exhibit Offered	Respondent's Objections
4:8-5:2		
7:21-8:1		
8:18-19:5		14:19 Calls for speculation; lack of foundation Petitioners respond that the question, as clarified at 14:23, asks the witness to estimate. The objection was dropped after the form of the question was modified.
19:19-21:12	Petitioners offer Trial Exhibit 240 (Dep. Ex. 427)	20:19 Lack of foundation. Witness is a lay witness and does not qualify under ER 602 and ER 701 to render such opinions. Petitioners respond that the witness is OSPI's Director of Nutrition Services who, as part of his job duties, regularly attends conferences on nutrition, meal planning and USDA compliance. He has requisite knowledge & experience to state his opinion as to why nutrition is important to academic performance.

Page:Line Range	Trial Exhibit Offered	Respondent's Objections
21:16-24:11		21:1-2 Lack of foundation. Witness is a lay witness and does not qualify under ER 602 and ER 701 to render such opinions. Petitioners respond that the witness is OSPI's Director of Nutrition Services who, as part of his job duties, regularly attends conferences on nutrition, meal planning and USDA compliance. He has requisite knowledge & experience to state his opinion as to why nutrition is important to academic performance.
26:4-30:1		
30:11-32:11		
33:8-35:13		
37:6-46:21	Petitioners offer Trial Exhibit 241 (Dep. Ex. 428) Petitioners offer Trial Exhibit 242 (Dep. Ex. 429)	40:4-7 Lack of foundation. Witness is a lay witness and does not qualify under ER 602 and ER 701 to render such opinions. Petitioners respond that the witness testified he is aware of research regarding the direct relationship between health and academic performance (39:6-15) and that he "takes it at face value" (39:17). The question objected to (whether the witness agrees with the conclusions of that research) is entirely appropriate. The witness does not have to be formally qualified as an expert to state his own opinions. Respondent's objection goes to weight, not admissibility.

Page:Line Range	Trial Exhibit Offered	Respondent's Objections
56:6-58:18	Petitioners offer Trial Exhibit 243 (Dep. Ex. 430)	No objection.
	Petitioners offer Trial Exhibit 245 (Dep. Ex. 432)	Tr. Ex. 245 - Lack of foundation; hearsay; authenticity. Witness was not able to identify the exhibit nor could he provide substantive testimony about the purported information in the document. See 53:2-19 and 54:20-55:3
		Petitioners' Response: The witness has personal knowledge to testify about the Meals For Kids: Free And Reduced Price Breakfast Program he administers; the witness is only asked to testify regarding the program as it currently exists; see e.g. 55:4-18; 56:4-5; 56:22-25. The business record should be admitted for purposes of understanding the questions and answers that are posed in the deposition.

II. Respondent's Designations (transcript highlighted in blue):

Page: Line Range	Trial Exhibit Offered	Petitioners' Objections
8:2-17		
19:6-18		
24:12-16		
24:20-26:3		
30:2-10		
32:12-33:4		
36:25-37:5		
46:22-51:9		

1	51:14-52:25		
2	53:2-19		
3	54:20-55:3		
4	59:17-63:11		

6 DATED this 20th day of October, 2009.

7 FOSTER PEPPER PLLC

ROBERT M. MCKENNA
Attorney General

9 



10 THOMAS F. AHEARNE, WSBA #14844
11 CHRISTOPHER G. EMCH, WSBA #26457
12 EDMUND ROBB, WSBA #35948
Attorneys for Petitioners

WILLIAM G. CLARK, WSBA #9234
CARRIE L. BASHAW, WSBA #20253
Assistant Attorneys General
Attorneys for Respondent

SUPERIOR COURT OF WASHINGTON FOR COUNTY OF KING

MATHEW & STEPHANIE McCLEARY,)
on their own behalf and on)
behalf of KELSEY & CARTER)
McCLEARY, their two)
children in Washington's) No. 07-2-02323-2 SEA
public schools; et al.,)
Petitioners,)
vs.)
STATE OF WASHINGTON,)
Respondent.)

DEPOSITION UPON ORAL EXAMINATION

OF

GEORGE C. SNELLER

9:13 a.m.

June 3, 2009

600 Washington

Olympia, Washington

Margaret Walkky, CCR, RPR, RMR, CRR
Court Reporter, License No. 2540

A P P E A R A N C E S

For Petitioners:

EDMUND W. ROBB

Foster Pepper

1111 Third Ave, Ste 3400

Seattle, Washington 98101

206-447-4400

erobb@foster.com

For Respondent:

CARRIE L. BASHAW

Assistant Attorney General

7141 Cleanwater Drive SW

PO Box 40124

Olympia, Washington 98054

360-586-6565

carrieb@atg.wa.gov

1 Whereupon,
2 GEORGE C. SNELLER,
3 having been first duly sworn, was called as a witness
4 herein and was examined and testified as follows:
5

6 E X A M I N A T I O N

7 BY MR. ROBB:

(8) Q. (Good morning. My name is Edmund Robb.)
(9) I'm an attorney for Foster Pepper, who is representing
(10) the petitioners in this matter.

(11) (Exhibit-426 marked.)

(12) Q. (Could you please state your name and
(13) address for the record?)

(14) A. (George Sneller, 4028 Indian Summer Drive
(15) Southeast, Olympia, Washington, 98513.)

(16) Q. (And you've been handed what's marked
(17) Exhibit-426. Is this the deposition notice which
(18) you're appearing for today?)

(19) A. (The title is incorrect for myself.)

(20) Q. (What is your correct title?)

(21) A. (Director of child nutrition services.)

(22) Q. (Okay.)

(23) A. (Office of the Superintendent of Public
(24) Instruction.)

(25) Q. (Is everything else about the notice)

(1) correct?

(2) A. Yes.

3 Q. Okay. Mr. Sneller, have you ever had your
4 deposition taken before?

5 A. Yes, I have.

6 Q. About how many times?

7 A. I'd say about three.

8 Q. What kind of cases?

9 A. Personnel, divorce.

10 Q. Okay. Were those here in Washington?

11 A. Excuse me?

12 Q. Were those here in Washington?

13 A. No, they were not.

14 Q. Where were they?

15 A. Florida.

16 Q. So have you ever been a party to any
17 litigation?

18 A. By that you mean?

19 Q. Someone who is either suing or being sued
20 in the litigation.

21 A. As in divorce?

22 Q. That would count, yes.

23 A. Yes.

24 Q. Is that the only time?

25 A. Yes.

1 as you've already seen.

2 A. Okay.

3 Q. Those are made for the record and to
4 preserve objections if this deposition is needed
5 later. However, you're able to answer the questions
6 unless I've asked you for something that would require
7 you to reveal privileged information.

8 Do you have any physical, emotional or
9 medical condition that would affect your ability to
10 listen to my questions and concentrate on your answers
11 today?

12 A. I do have a hearing problem. That's the
13 only thing.

14 Q. I will try to speak up.

15 A. Thank you.

16 Q. If you ever miss a word, please ask me and
17 I will repeat the question.

18 A. Okay.

19 Q. Anything else?

20 A. No.

(21) Q. (Are you represented by counsel today?)

(22) A. (Yes.)

(23) Q. (Who is that?)

(24) A. (Carrie.)

(25) (MS. BASHAW: Bashaw.)

(1) (A.) (Bashaw.)

(2) (Q.) (Thank you. And then finally, what have
(3) you done to prepare for this deposition today?)

(4) (A.) (Can you be more specific?)

(5) (Q.) (Did you read any documents to prepare for
(6) this deposition?)

(7) (A.) (I did read some documents.)

(8) (Q.) (What did you read?)

(9) (A.) (I read some RCWs.)

(10) (Q.) (Do you remember which ones?)

(11) (A.) (Excuse me?)

(12) (Q.) (Do you remember which ones?)

(13) (A.) (28A.235.120, 28A.235.140, 28A.235.160, and
(14) the EALRs dealing with wellness, health and fitness.)

(15) (Q.) (What do those statutes that you just
(16) listed off generally pertain to?)

(17) (A.) (Breakfast and lunch programs in schools.)

(18) (Q.) (Okay. You said your title, I believe, is
(19) director of administration of child nutrition services?)

(20) (A.) (That was incorrect.)

(21) (Q.) (Oh, I'm sorry, the "administration" is --

(22) (A.) (Yeah, scratch "of administration.")

(23) (Q.) (Oh, okay. I apologize.)

(24) (So can you give me an idea of what falls
(25) under your scope of authority?)

(1) (A.) (Most all of the USDA child nutrition)
(2) (programs.)

(3) (Q.) (What are those programs?)

(4) (A.) (The national school lunch program, the)
(5) (school breakfast program, the after school snack)
(6) (program, the summer food service program, the child and)
(7) (adult care food program, the USDA commodity)
(8) (distribution program, the Washington grown fresh fruit)
(9) (and vegetable program, the USDA fresh fruit and)
(10) (vegetable program, the American recovery and -- the)
(11) (stimulus money, the federal equipment grant program for)
(12) (school food service. I think that's all.)

(13) (Q.) (So is it accurate to say that those)
(14) (programs all involve the delivery of food in the)
(15) (schools to students?)

(16) (A.) (Not directly.)

(17) (Q.) (Okay. Where am I wrong?)

(18) (A.) (We don't have anything to do with food.)
(19) (We administer the program to assist school districts)
(20) (and other agencies and institutions to provide food to)
(21) (schools, to the children.)

(22) (Q.) (Okay. Is your role more of an accounting)
(23) (and management role then?)

(24) (A.) (I don't know if I'd say accounting. My)
(25) (particular personal role is administering the)

(1) implementation of these programs to be consistent with
(2) state and federal regulations.)

(3) Q. Let's back up for a minute and maybe you
(4) could tell me a little bit about your education and
(5) work history.)

(6) A. Okay.)

(7) Q. So let's start with education after high
(8) school.)

(9) A. After high school, okay. I got a
(10) bachelor's in accounting from Florida State University
(11) and a master's in public administration from Florida
(12) State University.)

(13) Q. Approximately what years were those
(14) degrees?)

(15) A. The first one was 1965, and the second
(16) one, the master's was approximately 1972.)

(17) Q. Did you go to work after getting your
(18) bachelor's degree?)

(19) A. Yes, I did.)

(20) Q. What did you do?)

(21) A. I was an accountant for the state road
(22) department, the State of Florida.)

(23) Q. Okay. How long were you in that position?)

(24) A. Until, that was from 1965 to 1968.)

(25) Q. Okay. What did you do after that?)

(1) (A.) I went to work for the State Department of
(2) Education as an accountant of the elementary and
(3) secondary, Title I migrant education program.

(4) (Q.) Can you give me just briefly an idea of
(5) what you did in that position?

(6) (A.) I was managing the accounting aspect of
(7) the federal funds for that education program.

(8) (Q.) And those were all federal funds and not
(9) state funds?

(10) (A.) All federal funds.

(11) (Q.) And then how long were you in that
(12) position?

(13) (A.) The first time about three years.

(14) (Q.) So '68 or so to '72, '71?

(15) (A.) Thereabouts. That's a guess.

(16) (Q.) Okay. Then what did you do?

(17) (A.) I went to work for the PPBS coordinator
(18) for the Department of General Services in the State of
(19) Florida.

(20) (Q.) PPBS?

(21) (A.) Program planning budgeting system. It was
(22) developed by Robert McNamara under the Kennedy
(23) administration.

(24) (Q.) Can you put that in English?

(25) (A.) As opposed to line item budget, it was

(1) budgeting based on the legislature giving agencies an
(2) amount of money to get a job done with specific --

(3) Q. Kind of a block grant?

(4) A. Specifically defined outcomes, not telling
(5) them how many people they had to hire or how many
(6) pencils they had to buy, but as a performance-based
(7) budgeting system.

(8) Q. And your role specifically was?

(9) A. I was the budget coordinator for the
(10) Department of General Services in that capacity to take
(11) all of the different divisions within that agency and
(12) make sure that they had their budget prepared and
(13) proposed in a manner accepted by the legislature.

(14) Q. Did you have a role in deciding how money
(15) would be spent?

(16) A. No, just how it was to be described.

(17) Q. How long were you in that role?

(18) A. One year.

(19) Q. Why just one year?

(20) A. The system never worked. The legislature
(21) never gave up pencils and paperclips. You had to have
(22) two budgets.

(23) Q. Okay. So the new budget wasn't really --

(24) A. Actually, it had the PPBS budget and the
(25) regular itemized budget and I had to crosswalk the

(1) two. After one year of failure, they decided it isn't
(2) worth the trouble.

(3) Q. It just created more work, it sounds like?

(4) A. (Nods head.)

(5) Q. Yes?

(6) A. Excuse me, I should say yes.

(7) Q. What did you do after that?

(8) A. I think along about that time, I got my
(9) master's in public administration and was offered a job
(10) back in the Department of Education with the program
(11) that I had previously worked on when I left to go to
(12) the Department of General Services.

(13) Q. That's the migrant education program?

(14) A. Yes.

(15) Q. Were you in the same role or a different
(16) role?

(17) A. I was in a higher role, had more
(18) responsibility for allocating funds to school districts
(19) and tracking their expenditures of those funds.

(20) Q. How long did you stay in that position,
(21) approximately?

(22) A. I would say two or three years.

(23) Q. So when did you get involved in nutrition?

(24) A. Well, there was another stop between there
(25) and nutrition.

(1) Q. Okay, what was that?

(2) A. I was assigned the responsibility for the
(3) regular elementary and secondary ed Title I program,
(4) which is called the basic program, to lead a team of, I
(5) don't know if you'd call them auditors in today's sense
(6) of the word auditors, but they were program reviewers
(7) that their prime responsibility was to go around to all
(8) the districts and review their implementation of that
(9) Title I basic program.)

(10) Q. Interesting. How many auditors were there
(11) on that team?

(12) A. On my team, I think I had about four or
(13) five.)

(14) Q. Were there additional teams doing the same
(15) thing you were doing?

(16) A. Yes, there were.)

(17) Q. How many teams?

(18) A. I don't know. I don't remember.)

(19) Q. What would you guess?

(20) MS. BASHAW: Object to the form of the
(21) question. You're not obligated to guess.)

(22) THE WITNESS: Okay, I'm sorry.)

(23) Q. Estimate is perhaps a better word.)

(24) A. Estimate three at max.)

(25) Q. Okay, and then after that is when you got

Petitioners respond that the question, as clarified at 14:23, asks the witness to estimate. The objection was dropped after the form of the question was modified.

Resp. objects - Calls for speculation; lack of foundation

G - Witness provided his best estimate based on his memory and experience.

(1) (into nutrition?)

(2) (A. (Child nutrition, that's correct.))

(3) (Q. (How did you end up, how did you make that
(4) switch?))

(5) (A. (Well, with my financial accounting
(6) background I moved from the education side of the
(7) federal programs to the nutrition, food and nutrition
(8) USDA programs, and I was first responsible for managing
(9) the payment of claims, reimbursement claims.))

(10) (Q. (Reimbursement claims made by whom?))

(11) (A. (In the nutrition education, the state
(12) contracts with districts, okay?))

(13) (Q. (Okay.))

(14) (A. (And the money comes from USDA to the state
(15) and then the state reimburses the districts based on
(16) the meals that they serve to the children.))

(17) (Q. (Okay.))

(18) (MS. BASHAW: (I just want to clarify,
(19) you're talking about now way back when in Florida?))

(20) (THE WITNESS: (Way back when in Florida.))

(21) (MS. BASHAW: (As opposed to current?))

(22) (THE WITNESS: (Correct, correct, uh-huh.))

(23) (Q. (Is that still how it works today with
(24) these programs?))

(25) (A. (Yes.))

(1) Q. So here in Washington then, federal money
(2) is still paid to the state and school districts apply
(3) for reimbursement from the state based on the number of
(4) meals that they serve?

(5) A. Correct.

(6) Q. What did you say your title was?

(7) A. Which one?

(8) Q. In the nutrition job that we're talking
(9) about right now.

(10) A. In Florida?

(11) Q. Yes.

(12) A. I was the director of food and nutrition
(13) management my last job there. That was not the one we
(14) were just talking about.

(15) Q. I'm sorry, I've muddled the record here.
(16) When you started in nutrition, what was your title?

(17) A. I was the supervisor of claims payments.

(18) Q. Okay, and how long were you in that
(19) position?

(20) A. I estimate two years.

(21) Q. Then where did you go?

(22) A. Then I became supervisor of the claims
(23) payment and the monitoring review section.

(24) Q. Okay.

(25) A. That was I estimate about two years.

(1) Q. And then from there, did you progress on
(2) to another position?

(3) A. I became the director.

(4) Q. You became the director?

(5) A. Uh-huh.

(6) Q. How long were you the director?

(7) A. An estimate, six to eight years.

(8) Q. Is that essentially the same position in
(9) Florida that you have here in Washington?

(10) A. Yes.

(11) Q. If you would, would you tell me a little
(12) bit about your current position in Washington and what
(13) on a daily basis is entailed in your responsibilities?

(14) A. I supervise four supervisors. Each of
(15) those supervisors are responsible for one of those
(16) programs that I listed earlier.

(17) Q. Which ones were those?

(18) A. I have one supervisor for the national
(19) school lunch program, the school breakfast program, the
(20) after school snack program and the summer food service
(21) program.

(22) Q. Okay.

(23) A. And the USDA equipment grant program.

(24) Q. Okay.

(25) A. I have one supervisor for the child and

(1) (adult care food program, and one supervisor for the)
(2) (payment of claims and accounting and reporting, and I)
(3) (have one supervisor for the commodities, USDA commodity)
(4) (distribution program, and I have administrative)
(5) (assistant. So my day is taken up with answering)
(6) (emails.)

(7) (Q.) (Sounds familiar.)

(8) (A.) (The majority of my time.)

(9) (Q.) (You mentioned earlier the health and)
(10) (fitness EALR?)

(11) (A.) (Yes.)

(12) (Q.) (Does that factor into your job?)

(13) (A.) (Not directly.)

(14) (Q.) (Why did you review it for the deposition)
(15) (today?)

(16) (A.) (I was looking, I have read it but it's)
(17) (been a long time since I've read it, to see that the)
(18) (EALRs when OSPI develops their strategic plan, the)
(19) (things that we are -- we need to look at and how we)
(20) (would fit into the strategic plan should receive)
(21) (guidance from the EALRs. So I was just looking at it)
(22) (to see what do they say. You know, so we have not)
(23) (started a new strategic plan since our new)
(24) (administration came in. So the last one that we)
(25) (developed was several years ago.)

1 Q. So the EALR guides the strategic plan for
2 the programs that you implement?

3 A. Uh-huh, uh-huh. The OSPI strategic plan,
4 right.

5 (Exhibit-427 marked.)

6 Q. Are you aware of the work of the Joint
7 Task Force on Basic Education Finance that's been going
8 on?

9 A. Yes, I am.

10 Q. I'm sorry?

11 A. Yes, I am.

12 Q. Did you participate in those proceedings
13 at all either by giving testimony or -- well, first,
14 did you give testimony at those proceedings?

15 A. No.

16 Q. Did you contribute in any way to the work
17 that OSPI did for those proceedings?

18 A. No.

19 Q. I've handed you what's been marked as
20 Exhibit-427, which I'll just tell you is a presentation
21 that Mitch Denning made to the Basic Education Task
22 Force.)

23 MS. BASHAW: Appears to be.

24 MR. ROBB: Appears to be.

25 Q. I notice it was emailed to you.

Resp. objects - Lack of foundation. Witness is a lay witness and does not qualify under ER 602 and ER 701 to render such opinions.

Petitioners respond that the witness is OSPI's Director of Nutrition Services who, as part of his job duties, regularly attends conferences on nutrition, meal planning and USDA compliance. He has requisite knowledge & experience to state his opinion as to why nutrition is important to academic performance.

- (1) A. Uh-huh.)
- (2) Q. Have you reviewed this presentation
- (3) before?)
- (4) A. Yes, I have.)
- (5) Q. If you wouldn't mind turning to the page,
- (6) the pages aren't numbered, "What happens to hungry
- (7) kids?"
- (8) A. Okay.)
- (9) Q. I'd like to talk to you a little bit about
- (10) nutrition in the schools and the role that it plays
- (11) there. This presentation where it says Health, that
- (12) hungry kids have poor overall health status and
- (13) compromised ability to resist illness, greater
- (14) incidences of hospitalization, is that consistent with
- (15) your understanding of one of the effects that a lack of
- (16) nutrition has on kids in schools?)
- (17) MS. BASHAW: Object to the form of the
- (18) question.)
- (19) A. In my opinion?)
- (20) Q. Yes.)
- (21) A. I think it would have an effect.)
- (22) Q. What kind of effect?)
- (23) MS. BASHAW: Object to the form of the
- (24) question.)
- (25) A. In my opinion, a possible negative effect.)

B - W has background, experience, and training to testify pursuant to ER 701 and 702

(1) Q. (And how would you describe in your opinion)
(2) that negative effect?) *B - same ruling as previous*

(3) MS. BASHAW: Same objection.

(4) A. (Without proper nutrition, the body does)
(5) not function at the maximum either physically or
(6) mentally.)

(7) Q. (How would that affect performance in)
(8) schools?)

(9) A. (If the child is ill, they don't come to)
(10) school, so they don't perform. If they don't have
(11) proper nutrition, there's a tendency for them to be ill
(12) more often.)

13 Q. And then going on to behavior, actually,
14 let me back up for a second.

15 A. Okay.

(16) Q. (As the director of child nutrition)
(17) services, do you attend conferences on
(18) nutrition-related topics in your work capacity?)

(19) A. (Describe "nutrition-related topics.")

(20) Q. (Well, as the director of child nutrition)
(21) services, are there conferences that you attend?)

(22) A. (Yes.)

(23) Q. (What kind of conferences do you attend?)

(24) A. (Conferences, national conferences, state)
(25) conferences, and my specialists present workshops at

Resp. objects - Lack of foundation.
Witness is a lay witness and does not
qualify under ER 602 and ER 701 to
render such opinions.

Petitioners respond that the witness is OSP's Director of Nutrition Services
who, as part of his job duties, regularly attends conferences on nutrition, meal
planning and USDA compliance. He has requisite knowledge & experience to
state his opinion as to why nutrition is important to academic performance.

(1) (those conferences.)

(2) (Q. What kind of workshops?)

(3) (A. Anything from regulation compliance to)
(4) menu planning, things that would be of assistance to
(5) our what we call customers, the people in the schools
(6) and the other programs that actually implement the USDA
(7) programs.)

(8) (Q. And your customers are school districts?)

(9) (A. Our customers are school districts,
(10) private schools, child care centers, family daycare
(11) home sponsors, adult center sponsors. That pretty much
(12) covers it.)

(13) (Q. I understand why regulation compliance
(14) would be important, but why is menu planning important?)

(15) (A. Menu planning, they have to have the
(16) proper offerings in each of the meals in order to be
(17) reimbursed and meet the USDA requirements.)

(18) (Q. And what generally do those menu planning
(19) requirements consist of?)

(20) (A. Well, there's about three or four basic
(21) different menu planning options. One is a traditional
(22) option which requires a meat and meat alternate, a
(23) bread, bread alternative, a fruit and a vegetable, one
(24) of each, and a milk.)

(25) (And then we have the standard menu)

(1) planning option which has to have an entry, one other
(2) side item, plus milk, which has to meet the certain
(3) USDA basic nutrients in a menu plan averaged over a
(4) week.)

(5) Then we have the assisted nutrient
(6) planning option, which is the one the district doesn't
(7) do them, but they hire somebody to do it for them.)

(8) And then they have the -- what was the
(9) fourth one, it was, it's like the traditional, but it
(10) requires, it gives an option of doing different things
(11) with the bread, bread alternate, and planning and
(12) planning the menus. In other words, these -- a
(13) district has to choose one of those to meet, in order
(14) to get reimbursed.)

(15) Q. And as director of child nutrition
(16) services, do you have an understanding of why there are
(17) such strict requirements on the menu that's provided?

(18) A. Say again.)

(19) Q. Well, I'm trying to understand why they
(20) have these set menu guidelines.)

(21) A. The dietary guidelines for Americans,
(22) these menu guidelines are supposed to provide one third
(23) of the daily requirements at lunch and one fourth of
(24) the daily requirements at breakfast, and so these
(25) options that districts have according to USDA would

(1) provide that.)

(2) Q. And then the snack program, are there
(3) guidelines for that as well?

(4) A. Yes, there are.

(5) Q. What are those generally?

(6) A. Generally? Generally, okay. I'm not
(7) quite as familiar with that, but generally a fruit
(8) juice and a bread or a bread alternate, as far as
(9) what's actually provided to eat, and there are other
(10) requirements on how they serve it, how they count it
(11) and who is eligible, who is not eligible.

(12) Q. Are there calorie requirements for the
(13) snack?

(14) A. There are not calorie requirements for the
(15) snack. There are calorie requirements for those other
(16) meal patterns.)

17 Q. Those are the one third and the one
18 quarter that you talked about earlier?

19 A. Yes.

(20) Q. So speaking now of the meals that are
(21) provided in the public schools, are those provided to
(22) all children who are in the public schools?

(23) A. All children in attendance.)

(24) Q. All children in attendance are provided
(25) with the programs we've been talking about?

(1) (A.) (They have an opportunity to participate.)

(2) (Q.) (And what does one have to do to take

(3) advantage of that opportunity?)

(4) (A.) (Be in attendance and enrolled in a school.)

(5) (Q.) (Now, I was expecting you to say there's a

(6) poverty requirement or an income threshold for these

(7) programs. Is that not the case?)

(8) (A.) (That is definitely --)

(9) (MS. BASHAW: Object to the form of the

(10) question. He answered the question you asked.)

(11) (MR. ROBB: Well, I'm asking another

(12) question now.)

(13) (Q.) (Is there an income requirement?)

(14) (A.) (No.)

(15) (Q.) (Really, okay. So we're not talking about

(16) the free and reduced price lunches right now then?)

(17) (A.) (Correct.)

(18) (Q.) (Help me understand where I'm going wrong

(19) here. The programs you're talking about the one third

(20) and the one quarter of the meal on the daily allowance,

(21) is that simply the meals that are provided in the

(22) cafeterias in schools in general?)

(23) (A.) (Yes.)

(24) (Q.) (So the institutional guidelines that

(25) you're talking about apply to all breakfast and lunch

(1) and snacks that are provided in the public schools?)

(2) A. Correct.)

(3) Q. I understand, thank you.)

(4) So let's turn now to talk about free and

(5) reduced price lunch programs and I'll refer to it as

(6) that. What's the technical regulatory-eze way to refer

(7) to these programs?)

(8) A. Child nutrition programs.)

(9) Q. The child nutrition programs, okay. Now,

(10) how do children qualify for these child nutrition

(11) programs?)

(12) A. Be enrolled in school.)

(13) Q. And --)

(14) A. All children qualify.)

(15) Q. Is there not an income requirement for

(16) those programs?)

(17) A. There's an income requirement for those

(18) that receive free meals and for those that receive

(19) reduced price meals.)

(20) Q. Okay.)

(21) A. But all children, USDA subsidizes all

(22) children's meals.)

(23) Q. Okay, and how does that subsidy work?)

(24) A. The districts go through a process at the

(25) beginning of every school year and they send a packet

(1) to every home for every child that will be enrolled,
(2) and the packet consists of an application and certain
(3) other information for the family to complete, if they
(4) wish, and return back to the district. When the
(5) district receives those applications, those
(6) applications are entitled free and reduced price meal
(7) applications.)

(8) The district evaluates the information on
(9) those applications and determines whether a child is
(10) eligible for free -- now, all the children in a
(11) household are on one application. So all the children
(12) would be eligible for free or they would be eligible
(13) for reduced price, or they would not be eligible for
(14) any of those, either of those free or reduced price
(15) meals. Once they go through that process, they notify
(16) the parents that your child is eligible for this one or
(17) that one, or not eligible. That's one method.)

(18) (The other method is the method we call
(19) direct certification. All the households in the state
(20) that have children that are enrolled in, not just
(21) public schools, but any school with grades K through
(22) 12, if they are receiving basic food, which is commonly
(23) known as food stamps, they're in a database that is
(24) matched with our OSPI core student record system
(25) database and those children that are matched are what

(1) the USDA refers to as categorically eligible for free
(2) meals.)

(3) When the family receives notification of
(4) their basic food benefits, that notification lists the
(5) names of the children in that household. There's a
(6) statement that says if your child attends a school that
(7) is participating in the USDA meals program, they are
(8) categorically eligible for free meals. If you do not
(9) wish for your child to participate in that program, you
(10) need to notify the school.)

(11) Those are two basic, I said basic, but it
(12) also included TANF, households receiving --)

(13) Q. What is that?)

(14) A. Temporary assistance for needy families.)

(15) Q. Is that welfare?)

(16) A. Excuse me?)

(17) Q. Welfare, is that the colloquial expression
(18) for that?)

(19) A. I don't know if I'd call it that.)

(20) Q. Okay.)

(21) A. It's cash assistance.)

(22) Q. Okay.)

(23) A. Now, there are other eligible paths for
(24) free categorical eligible. Those that are on the list
(25) of the district's homeless liaison are categorically

(1) eligible for free meals. Those students that are on
(2) the district's list for migrant farm worker children
(3) are categorically eligible for free meals. Those that
(4) are on the list of the district's homeless -- not
(5) homeless, runaway program are categorically eligible
(6) for free meals. Those that are participating in an
(7) enrolled Head Start program are categorically eligible
(8) for free meals. And so that pretty much sums up how
(9) that system works.)

(10) Q. (So if you're not in one of these)
(11) categorical programs that you listed, the homeless,
(12) migrant, Head Start, et cetera, or you don't qualify
(13) based on the application, is your meal still subsidized
(14) by the US government?)

(15) A. Yes, it is.)

(16) Q. How does that work?)

(17) A. For every lunch, and these are approximate
(18) numbers, for every lunch, I think the rate for what we
(19) would call a nonneedy is subsidized around 21 cents.)
(20) Plus for every lunch for all meals, needy and nonneedy,
(21) the USDA commodity distribution program gives the
(22) equivalent of about 20 cents per lunch. And the
(23) commodity could be chicken, it could be beef, it could
(24) be cheese, whatever. So the paid meal then becomes
(25) what we call paid or nonneedy, is going to be)

(1) subsidized around 40 cents.)

(2) Q. Do you have an understanding of how much
(3) the nonneedy kids on average pay for a lunch in
(4) schools?

(5) A. No, but it's in a report.)

(6) Q. Where would I find that?)

(7) A. On the OSPI website bulletins and
(8) memorandums, and I think it would be listed under
(9) report 1800.)

(10) Q. Good memory.)

(11) Now, when you say that people or students,
(12) rather, in these categorical programs, the homeless,
(13) migrant, Head Start who are approved by the districts
(14) after an application qualify for free and reduced price
(15) lunch, free and/or reduced price lunches, do you have
(16) an understanding of how many students who qualify for
(17) those programs actually participate in them?

(18) A. I do have an understanding. I don't have
(19) any idea what that number is.)

(20) Q. You don't?)

(21) A. It's also in the report.)

(22) Q. What would you estimate it to be?)

(23) MS. BASHAW: You mean state-wide?)

(24) MR. ROBB: Yes.)

(25) A. I would estimate between 45 and 50)

(1) percent.)

(2) Q. Do or don't participate?

(3) A. Do.)

(4) Q. What's that understanding based upon?

(5) A. Those reports that I mentioned.

(6) Q. And do you have any understanding of why
(7) so many kids who would qualify for the programs don't
(8) participate?)

(9) MS. BASHAW: Object to the form of the
(10) question.)

(11) Q. You can answer.)

(12) MS. BASHAW: If you understand the
(13) question, you can answer.)

(14) A. Do I understand why they don't
(15) participate, is that what you asked?)

(16) Q. Yes.)

(17) A. I have anecdotal information.)

(18) Q. What is that?)

(19) A. Parental preference on what's being
(20) offered, some parents like to send their own food, not
(21) enough time to eat.)

(22) Q. Not enough time to eat?)

(23) A. Not enough time to eat.)

(24) Q. Explain that for me.)

(25) A. Schools have lunch periods that might only)

(1) be 30 minutes and when a child has to stand in line for
(2) the majority of that 30 minutes waiting to get their
(3) meal, they would often opt not to do that. There are
(4) competitive food sales in the secondary schools.

(5) Q. What do you mean by "competitive food
(6) sales"?

(7) A. Okay, good question. Foods that are not
(8) provided by the school food service.

(9) Q. Foods in vending machines?

(10) A. Correct, and student stores, and off
(11) campus opportunities.

(12) And the other anecdotal information I
(13) would have is students don't like what's being served.

(14) Q. Your child nutrition services office, do
(15) you also provide training or guidelines on how school
(16) districts should structure their lunch programs?

(17) A. As far as scheduling?

(18) Q. Yes.

(19) A. No.

(20) Q. As far as the duration of the lunch
(21) period?

(22) A. No. The USDA regulation says that
(23) lunchtime can begin no earlier than 10:00 in the
(24) morning or later than 2:00 in the afternoon. And we
(25) have had requests, they want to go outside of that time

(1) period, and we have the authority to grant exceptions.)

(2) Q. Are you aware of any exceptions?)

(3) A. Yes. Not specifically, I just know we've

(4) given some.)

5 MR. ROBB: Let's go off the record for a
6 second.

7 (Discussion off the record.)

(8) Q. You said in your jobs in Florida you were

(9) involved in the accounting aspect of food, nutrition

(10) services?)

(11) A. Uh-huh.)

(12) Q. Is that part of your responsibilities here

(13) in Washington?)

(14) A. I supervised that.)

(15) Q. So are you aware of the accounting

(16) procedures here in Washington?)

(17) A. Yes, uh-huh.)

(18) Q. Are you familiar with the F-196 forms?)

(19) A. Yes.)

(20) Q. I'll hand you one. This has previously

(21) been admitted in this case as Exhibit-14. Will you

(22) take a look at page 17 here, if you would.)

(23) A. Uh-huh.)

(24) Q. I just want to confirm, the nutrition

(25) programs we're talking about are --)

(1) MS. BASHAW: I'm sorry, what exhibit are
(2) we looking at?

(3) MR. ROBB: This is 14.

(4) MS. BASHAW: 14.

(5) MR. ROBB: Yes.

(6) Q. The expenses for the nutrition programs
(7) that we're talking about, are they those that are
(8) described here in this section?

(9) MS. BASHAW: What page are you on?

(10) MR. ROBB: Page 17.

(11) A. When you say these over here, line 42 or
(12) activity 42, I don't think so.

(13) Q. Do you know where they are?

(14) A. Program 98.

(15) Q. Then here, let me give you this. This is
(16) the Accounting Manual for Public School Districts in
(17) the State of Washington, which has been admitted as
(18) Exhibit-20 in this case.

(19) A. Uh-huh, uh-huh.

(20) Q. So under 40 here, this is the program
(21) title you pointed to, program 98 is --

(22) A. That's a subcategory.

(23) Q. Then the activity title is what I was
(24) going for.

(25) A. Okay.

(1) Q. And if you look here at the activity, 40,
(2) generally, "the activities in the series are used to
(3) record operating expenditures for nutrition services."

(4) A. Okay, okay, subcategory.

(5) Q. Okay.

(6) A. Uh-huh.

(7) Q. That's a subcategory of?

(8) A. Program 98.)

(9) Q. And those, so the nutrition services here
(10) are broken down by the food and the operation?

(11) A. Yes, it says program 98 right here.)

(12) Q. In program 98?

(13) A. Yes.)

14 Q. Is this a different way of accounting for
15 those nutrition services?

16 A. Different from?

17 Q. In here, my understanding is the program,
18 the school, program 98, school food services, then it's
19 also accounted for as by activities as I understand it,
20 and I'm just trying to make sure these activities are
21 the ones that we're talking about.

22 A. Yes, that would be included on that 1800.

23 Q. So these institution services described on
24 the school facility services of activity 40 are the
25 ones we're talking about?

1 MS. BASHAW: I'm going to object to the
2 form of the question. I'm not sure what you're talking
3 about at the moment. If you understand his question.

4 Q. Do you know what I'm asking?

5 A. Ask it one more time. Ask it one more
6 time.

7 Q. I'm not an accountant and so I'm trying to
8 make sure that I've figured out --

9 MS. BASHAW: Why don't you just have him
10 explain it to you, what the F-196 information means.

11 A. The F-196 is the source of our information
12 for the 1800 report that we put out every year.

13 Q. The 1800 report is?

14 A. What you find on the internet, on the OSPI
15 bulletins and memos web page.

16 Q. Oh, I see.

17 A. Okay?

18 Q. Okay. So you use the F-196 data in order
19 to generate the 1800 report?

20 A. Correct.

21 Q. Okay, I'm with you.

22 A. If you look at that 1800 report, it gives
23 you the whole detail as to how the numbers are, where
24 they came from.

(25) (Q.) (Okay. You use this 98 program here)

1 (indicating)?

2 A. That's correct.)

3 Q. And that's for the nutrition services that
4 you provide?

5 A. Correct.)

6 Q. Then activity 40, can you explain to me
7 what that is?

8 A. So 40 would be a general category, school
9 food service under program 98, and then you have the
10 subcategories under that that would break out the cost
11 for food, the cost of supervision, the cost of
12 operations, and whatever it cost to operate the school
13 food service.)

14 Q. Okay. So is it accurate then to say that
15 it gives you more detail on the program 98
16 expenditures?

17 A. I would say yes.)

18 Q. Okay.)

19 (Exhibit-428 marked.)

20 MS. BASHAW: Edmund, I don't see any
21 reference in the first part of this exhibit that refers
22 to attachments, and there appear to be a whole bunch of
23 stuff.)

24 MR. ROBB: There are, and I'll just tell
25 you, this is how we printed it off the website as one

(1) report that attaches everything together.)

(2) MS. BASHAW: Well, that may be, but I'm
(3) going to object to the extent that the report itself
(4) does not appear to refer to having attachments.)

(5) MR. ROBB: Okay.)

(6) Q. Mr. Sneller, now that you've had a few
(7) minutes to review Exhibit-428, can you tell me, is this
(8) a document with which you're familiar?)

(9) A. Parts of it.)

(10) Q. Parts of it. Which parts?)

(11) A. The nutrition service part, Senate Bill
(12) 5093.)

(13) Q. Can you identify this document for me?)

(14) A. It's a report on the Task Force on
(15) Comprehensive School Health Reform.)

(16) Q. Are you familiar with the work of the
(17) Comprehensive School Health Reform Task Force?)

(18) A. I am aware of the existence of that task
(19) force.)

(20) Q. And in fact, you presented to the task
(21) force; is that correct?)

(22) A. I did, I did.)

(23) Q. What was the nature of your presentation?)

(24) A. The best I recall, dealing with the school
(25) nutrition programs and this state's support of those

(1) programs generally.)

(2) Q. If you wouldn't mind turning to page 4 --

(3) A. 4.

(4) Q. -- of the report, yes.)

(5) A. Okay.)

(6) Q. Now, in the third paragraph in, it states,
(7) "The task force also used emerging evidence that shows
(8) the direct relationship between health and academic
(9) performance."

(10) A. Uh-huh.)

(11) Q. "Over the last decade, research has
(12) concluded that student health status and academic
(13) achievement are deeply connected."

(14) Are you aware of that research?)

(15) A. I have heard it.)

(16) Q. What's your understanding of?)

(17) A. Take it at face value.)

(18) Q. Can you just tell me what in general the
(19) research out there shows?)

(20) A. I think what the paragraph states.)

(21) Q. Are these --

(22) A. I'm not an epidemiologist. I don't do
(23) these studies.)

(24) Q. Do these kinds of studies influence your
(25) work as the director of child nutrition services?)

1 MS. BASHAW: Object to the form of the
2 question.

3 A. No.

4 Q. The next sentence, "The task force learned
5 from state epidemiologists that poor nutrition and
6 physical inactivity puts students at increased academic
7 risk." Do you agree with that statement?

8 MS. BASHAW: Object to the form of the
9 question.

10 A. I don't have a basis to contradict it. ✓

11 Q. But as the director of child nutrition
12 services for the state, do you agree that poor
13 nutrition is important, or let me rephrase it, the lack
14 of nutrition or poor nutrition puts students at
15 increased academic risk?

16 A. It's possible. ✓

17 Q. And why would that be?

18 A. As I stated previously, if a child is ill
19 because they have poor nutrition, they don't come to
20 school.

21 Q. So they miss school?

22 A. Uh-huh.

23 Q. And that impacts their academic
24 performance?

25 A. Academic performance, uh-huh. If they

Resp. objects - Lack of foundation. Witness is a lay witness and does not qualify under ER 602 and ER 701 to render such opinions.

Petitioners respond that the witness testified he is aware of research regarding the direct relationship between health and academic performance (39:6-15) and that he "takes it at face value" (39:17). The question objected to (whether the witness agrees with the conclusions of that research) is entirely appropriate. The witness does not have to be formally qualified as an expert to state his own opinions. Respondent's objection goes to weight, not admissibility.

(1) don't have the proper nutrition in their developmental
(2) stages, their ability to absorb the learning process is
(3) not as good as it could be, in my opinion.)

(4) Q. (Do you regularly read any journals on
(5) nutrition or school nutrition as part of your work?)

(6) A. (No. I wish I had the time. I read the
(7) regs.)

(8) Q. (Let's flip to page 11, if you would.)
(9) Again, there's the statement about a correlation
(10) between nutrition and academic risk, that's what we
(11) were just talking about?)

(12) A. (Uh-huh.)

(13) Q. (Yes?)

(14) A. (Yes.)

(15) Q. (And then, "approximately 90,000 students
(16) in public schools meet the requirements for reduced
(17) price meal benefits.")

(18) A. (Uh-huh.)

(19) Q. (Are those the children that meet the
(20) requirements we were talking about earlier, either the
(21) categorical requirements of being homeless program,
(22) migrants, Head Start or have been approved by some
(23) application to the school district?)

(24) A. (I can't answer the question the way you
(25) asked it.)

(1) Q. Well, what's wrong with the way I asked
(2) it?

(3) A. You covered more than one category of
(4) eligibility.

(5) Q. Okay. So this 90,000 students, is that
(6) just one of the categories?

(7) A. That is correct.

(8) Q. Which one is that?

(9) A. Reduced price.

(10) Q. Oh, I see, and those are the students and
(11) how do students qualify for that?

(12) A. Through an application.

(13) Q. The next sentence, "When the state
(14) eliminated the co-payment for reduced price breakfast,
(15) participation increased approximately 45 percent."

(16) A. Uh-huh.

(17) Q. What's the co-payment that was required?

(18) A. 30 cents per breakfast.

(19) Q. When was that eliminated?

(20) A. Whenever this legislation started,
(21) estimating two to three years ago.

(22) Q. And is there a co-payment required now for
(23) breakfasts for reduced price breakfasts?

(24) A. Not in public schools.

(25) Q. So there might be some in private schools;

1 is that correct?

2 A. Correct.)

3 Q. Is there a co-payment for students in the
4 reduced price lunch program?

5 A. Yes.)

6 Q. What is that co-payment?

7 A. 40 cents.)

8 Q. Why was the breakfast co-payment
9 eliminated and not the lunch co-payment, to the best of
10 your understanding?

11 A. I cannot answer that. I have no idea.
12 (Exhibit-429 marked.)

13 Q. So can you identify Exhibit-429 for me for
14 the record?

15 A. It was the legislative budget request from
16 OSPI to eliminate the reduced price co-pay for lunch
17 for those grades not previously funded.)

18 Q. So some of the grades were, the co-pay was
19 eliminated for some of the grades?

20 A. Correct.)

21 Q. Which grades are those?

22 A. K through 3.)

23 Q. Do you have an understanding of why K
24 through 3, that a co-pay was eliminated?

25 A. No, I do not.)

(1) Q. Is this a document that your office
(2) prepared?

(3) A. I assisted in preparing it.

(4) Q. Who worked with you on putting this
(5) together?

(6) A. Randy Newman.

(7) Q. Who is Mr. Newman?

(8) A. He is my budget person.

(9) Q. Is he one of the employees that you
(10) oversee?

(11) A. No, he's not.

(12) Q. He is not in your office then?

(13) A. He is not in my office.

(14) Q. What are his responsibilities generally?

(15) A. He provides projections for my
(16) administrative budget.

(17) Q. So you rely on him to prepare your budget
(18) requests?

(19) A. For my operating, my internal.

(20) Q. Oh.

(21) A. He also prepares the fiscal notes for my
(22) activities and in the legislative budget process, which
(23) is, he prepared this.

(24) Q. And did you approve this before it was
(25) sent to the legislature?

(1) (A.) (Yes, I did.)

(2) (Q.) (So I'd like to look at the narrative)

(3) (justification and impact statement. "When the state

(4) eliminated the co-payment for reduced price breakfast,

(5) participation increased approximately 45 percent." Do

(6) you have any understanding as to why it increased 45

(7) percent?)

(8) (A.) (My assumption would be that the parents

(9) cannot afford the 40 cents.)

(10) (Q.) (Okay.)

(11) (A.) (I'm sorry, 30 cents. That was breakfast.)

(12) (Q.) (Then it says, "Studies indicate that when

(13) more students participate in the United States

(14) Department of Agriculture (USDA) nutrition programs,

(15) test scores improve.")

(16) (A.) (Uh-huh.)

(17) (Q.) (What did you base that statement on?)

(18) (A.) (That was Randy's statement.)

(19) (Q.) (Randy Newman?)

(20) (A.) (Yes.)

(21) (Q.) (But he's in the budget office, correct?)

(22) (A.) (He writes the fiscal notes.)

(23) (Q.) (You approved of this report that went out,

(24) correct?)

(25) (A.) (Uh-huh.)

(1) Q. (Do you disagree with that statement?)

(2) A. (No, I don't.)

(3) Q. (So you agree with that statement right
(4) now?)

(5) A. (Uh-huh.)

(6) Q. (Okay, and what is the basis for the
(7) statement that test scores improve?)

(8) A. (Based on the testimony from the
(9) epidemiologists.)

(10) Q. (Then going on, "Adequate nutrition is)
(11) essential for children of all grades to achieve
(12) academic success.")

(13) A. (Uh-huh.)

(14) Q. (As the director of child nutrition
(15) services for OSPI, do you agree with that statement as
(16) well?)

(17) A. (I do based on the epidemiologists'
(18) studies.)

(19) Q. (Would you say it's reasonable to rely on
(20) the epidemiologists' studies?)

(21) A. (I have no reason to doubt them.)

(22) Q. (Turning back to the process for paying for
(23) these lunches, there's a co-payment that we've talked
(24) about that is required of families in some instances?)

(25) A. (Uh-huh.)

(1) Q. (The districts can apply for money from the)
(2) state that the state passes through from the USDA; is)
(3) that correct?)

(4) A. (Uh-huh.)

(5) Q. (What other sources of funding is there for)
(6) the free or reduced price lunch programs?)

(7) A. (The child nutrition programs?)

(8) Q. (Yes.)

(9) A. (There's a difference.)

(10) Q. (Okay.)

(11) A. (There's a federal mandate that the state)
(12) supports with state general funds, what we call the)
(13) school lunch match of \$3 million per year.)

(14) (Funds that are not mandated that come from)
(15) the state general fund, from meals for kids grants,
(16) \$201,000 per year. Those grants are to help districts)
(17) either start new programs or improve current programs.)

(18) (A summer food service grant of \$70,000 per)
(19) year for basically the same purpose of assisting with)
(20) implementing new or improving current summer food)
(21) service programs.)

(22) (We spoke about the elimination of reduced)
(23) price co-pay. We spoke about the \$3 million.)

(24) (There's a summer food service meal)
(25) supplement the state provides of \$100,000 per year, and)

(1) I think that covers them.)

(2) Q. And those are all state funding sources?)

(3) A. State general fund. There's the
(4) supplement for the elimination of the co-pays for
(5) breakfast and lunch, for all grades' breakfast, K-3
(6) lunch. There's additional state supplement for free
(7) and reduced price breakfast that amounts to about 15
(8) cents per breakfast that's state funded. Then the
(9) meals for kids grants that I just mentioned.)

(10) Q. Has funding for any of these programs
(11) you've talked about, any of those state funding sources
(12) been reduced in the current budget?)

(13) A. No.)
(14) One that I did not mention was the
(15) Washington grown fresh fruits and vegetables program
(16) which was the current year at \$600,000. Next year
(17) it'll be \$300,000. That's the only one that was
(18) reduced that was not funded (indicating).)

(19) Q. And the "this" is the elimination of the
(20) co-pay?)

(21) A. Lunch co-pay for K-12.)

(22) Q. Now, you referred to a chart there. So
(23) tell me straight on the various funding sources that
(24) there are for child nutrition services.)

(25) A. I can't remember them all.)

(1) Q. So you used that to refresh your
(2) recollection?

(3) A. Yes.

(4) Q. Could I take a look at that, please?

(5) A. (Complies.)

(6) (Exhibit-430 marked.)

(7) Q. Is this a document that you created?

(8) A. Yes, I did.

(9) Q. And what does it intend to convey, what
(10) information does it intend to convey?

(11) A. It gives me an easy reference when Randy,
(12) my budget man, asks me how much of that
(13) appropriation -- this appropriation is all improvise
(14) language. It is not --

(15) Q. What does that mean?

(16) A. It means that there's no, you won't see an
(17) RCW that tells you these numbers. There will be in the
(18) approps, if I correctly recall, a lump sum amount, and
(19) sometimes some of these are broken out and you can see
(20) the references in the sections of the Appropriation
(21) Act. Some of them are lumped and we use the conference
(22) reports or whatever we had available to us to allocate
(23) the different uses of where the funds should be spent.
(24) I will have to say that the current, what
(25) do they call it, supplemental appropriation for the

(1) current fiscal year, when that was passed by the last
(2) legislature, they eliminated all proviso references,
(3) which left only a total amount of money. They did not
(4) take the money. They just eliminated the provisos. So
(5) if you are looking for those things, they were
(6) eliminated.)

(7) Q. (Does that have any effect on your
(8) operations, the fact that they eliminated the provisos?)

(9) A. (With the budget cuts, we did lose the
(10) \$201,000 for the meals for kids grants for the current
(11) year, but we were able to maintain all the rest
(12) including the 70,000 for the summer meals for kids
(13) grant.)

(14) Q. (And what are the meals for kids grants?)

(15) A. (It's those grants to enable districts to
(16) either start new programs or improve current programs.)

(17) Q. (What sorts of programs have been started
(18) using those meals for kids grants?)

(19) A. (If you're talking about the one for the
(20) regular programs.)

(21) Q. (Yes.)

(22) A. (It's mostly for equipment needs. The
(23) breakfast program, for instance, they might need a milk
(24) cooler.)

(25) Q. (A milk cooler?)

(1) (A.) (Milk cooler. They might need a serving
(2) table, usually small items. It's competitive grants
(3) and it's not a lot of money.)

(4) (Q.) (Are these grants to school districts --)

(5) (A.) (Yes, only school districts --)

(6) (Q.) (-- or to individual schools?)

(7) (A.) (Only school districts, and the school
(8) district can apply for a grant and specify it was for a
(9) particular school.)

10 (Q.) Ballpark terms, how many grants would you
11 say were given out during the last period?

12 (A.) I have no idea. I have another supervisor
13 that handles that.

(14) (Exhibit-431 marked.)

(15) (Q.) (I'll tell you, this is one of the
(16) documents that's been provided to us during discovery)
(17) in this case and I'm hoping you can tell me what it
(18) is.)

(19) (A.) (Geez. I don't recall seeing this before,
(20) breakfast funding gap projections. It appears to
(21) reflect the number of breakfasts served in public
(22) schools for the years 2001-'02, and 2002-'03 in the
(23) categories free, reduced and total.)

(24) (MS. BASHAW: I'm going to stop you there)
(25) because I'm not sure what the question is at this)

(1) point. You've just handed him a document and he said
(2) he hadn't seen before. So what's the question?

(3) Q. Well, I guess the question, the thing I
(4) want to get at with this document is the gap that it
(5) refers to.)

(6) MS. BASHAW: I'm going to object to the
(7) form of the question, lack of foundation.)

(8) Q. Do you have any idea what that gap might
(9) be?)

(10) MS. BASHAW: Object to the form of the
(11) question, lack of foundation.)

(12) A. No.)

(13) Q. Is there a portion of the cost of
(14) providing free or reduced price lunches that individual
(15) school districts pay?)

(16) A. In some cases.)

(17) Q. What would those cases be?)

(18) A. I don't know. It would be those cases
(19) where the costs would be more than the receipt of the
(20) revenue.)

(21) Q. Are you aware of any specific case?)

(22) A. No, I don't.)

(23) Q. Is that something that you track in your
(24) office?)

(25) A. No, no.)

1 Q. Okay.

(2) (Exhibit-432 marked.)

(3) Q. Let me know when you're ready to talk
(4) about that one.)

(5) A. Okay.)

(6) Q. Now that you've had a few minutes to
(7) review this document, could you please identify it for
(8) the record?)

(9) MS. BASHAW: I'm going to object to the
(10) form of the question.)

(11) A. Meals for kids, child nutrition.)

(12) Q. Is this a document that you're familiar
(13) with?)

(14) A. No.)

(15) Q. No?)

(16) A. No.)

(17) Q. It's not one that you would have approved?)

(18) A. It was prepared before I came to work
(19) here.)

20 Q. Let me ask you if you would turn to page,
21 the second page under the heading Effect of Not
22 Funding.

23 MS. BASHAW: I'm not sure, but I think
24 we've got a copying problem.

25 MR. ROBB: Yes, I think I've got the same

1 copying problem.

2 MS. BASHAW: So you're really referring
3 to --

4 MR. ROBB: What is listed as page 3 of 5,
5 but it appears that page 2 of 5 is --

6 MS. BASHAW: Okay.

7 MR. ROBB: Actually, it looks like, if you
8 look at the Bates numbers, it looks like they're
9 sequential, so it looks like maybe page 2 was not
10 produced. So I'm looking at OSPIA0005306.

11 MS. BASHAW: All right.

12 MR. ROBB: Okay.

13 Q. "There are currently 18 school districts
14 and 276 schools that are serving lunch and do not
15 participate in the breakfast program." Are those
16 schools that don't provide breakfast at all?

17 MS. BASHAW: Object to the form of the
18 question.

19 A. Say the question again?

(20) (Q.) (When it says, "There are currently 18)
(21) (school districts and 276 schools that are serving lunch)
(22) (and do not participate in the breakfast program," what)
(23) (breakfast program is that?)

(24) (MS. BASHAW: Object to the form of the)
(25) (question, lack of foundation. It predates him.)

(1) (Q.) (Do you have any idea what the breakfast
(2) program might be that this document is referring to?)

(3) (A.) (I don't for this period of time.)

(4) (Q.) (Okay.) (The meals for kids free and reduced
(5) price breakfast program that this refers to, is that
(6) still a program that's that currently offered by the
(7) state?)

(8) (A.) (Yes.)

(9) (Q.) (And what is that program?)

(10) (A.) (As I described here.)

(11) (Q.) (Is that a program that all school
(12) districts and schools in the state participate in?)

(13) (A.) (They have the opportunity to, yes.)

(14) (Q.) (And do you have an understanding as to how
(15) many, roughly speaking, districts participate in the
(16) state?)

(17) (A.) (You're talking now?)

(18) (Q.) (Yes, currently.)

(19) (A.) (In the breakfast or lunch program?)

(20) (Q.) (Yes.)

(21) (A.) (I can't give an answer because it's
(22) different for breakfast as for lunch.)

(23) (Q.) (How about breakfast, is what this seems to
(24) be focused on?)

(25) (MS. BASHAW:) (Well, if you want to ask him)

(1) about current time, that's fine, but if you want to ask
(2) him about this document, he doesn't have foundation to
(3) talk about this document.)

(4) Q. We're taking about current times.)

(5) A. No, I don't know those numbers.)

(6) Q. Now, this document talks about requiring
(7) school districts to subsidize a greater amount of the
(8) costs associated with the program and it says that,
(9) "Each year that creates a disincentive for schools to
(10) begin participating in the breakfast program."

(11) What costs does a school district who
(12) wants to participate in the meals for kids breakfast
(13) program, what costs does a district bear?)

(14) MS. BASHAW: Well, I'm going to object to
(15) the form of the question to the extent that you keep
(16) coming back and tying it to this particular document in
(17) your question.)

(18) MR. ROBB: That's fine.)

(19) MS. BASHAW: He doesn't have foundation to
(20) talk about this particular document.)

(21) MR. ROBB: Okay.)

(22) Q. But I'm asking you, we're talking about
(23) the current program and I'm just trying to understand
(24) what costs the school districts might bear, if any, the
(25) school districts that participate in this program?)

(1) (A.) (If you separate the term meals for kids)
(2) (program and just talk about breakfasts.)

(3) (Q.) (Okay.)

(4) (A.) (Okay? They have the cost of food and
(5) (labor, utilities, indirect costs, the same as they
(6) (would have for lunch.)

(7) (Q.) (Okay. And a portion of those costs are
(8) (paid for by the state; is that correct?)

(9) (A.) (That is correct.)

(10) (Q.) (And a portion of those costs are paid for
(11) (by districts; is that correct?)

(12) (A.) (In some cases.)

(13) (Q.) (In what cases?)

(14) (A.) (When their cost exceeds their revenue.)

(15) (Q.) (Do you have an understanding of how many,
(16) (roughly speaking, districts for whom that is the case?)

(17) (A.) (Not for breakfast. We don't track
(18) (breakfasts individually from lunch as far as costs.)

(19) (Q.) (Combined?)

(20) (A.) (The majority of districts, when you say
(21) (combined for breakfast and lunch.)

(22) (Q.) (Yes.)

(23) (A.) (So you're speaking of program 98.)

(24) (Q.) (Okay, yes.)

(25) (A.) (I would guess there would be approximately)

(1) 92 percent of the districts spend more for the
(2) breakfast and lunch USDA child nutrition programs than
(3) they receive in revenue.)

(4) Q. Either from the federal government or from
(5) the State of Washington?

(6) A. Yes, or from local revenue generating
(7) activities.)

(8) Q. And what would those revenue generating
(9) activities be?

(10) A. The costs they charge the students for the
(11) meals.)

(12) Q. Do you know whether that gap that the
(13) school districts pay has been increasing in recent
(14) years?

(15) A. It has.)

(16) Q. And do you have an understanding of what
(17) causes that increase?

(18) A. Labor and food increases.)

19 Q. Do you know whether that increasing
20 funding gap affects the nutrition programs at the
21 school? For instance, do they make changes to the
22 programs that they have in place due to the gaps, if
23 you know?

24 A. I don't know.

25 Q. You mentioned earlier competitive foods?

1 A. Uh-huh, yes.

2 Q. Is that the right term?

3 A. Yes.

4 Q. The competitive foods, are they regulated
5 by the state at all, the offerings that a district or
6 school can make? That was poorly phrased, let me ask
7 again.

8 Do you at OSPI have any control over
9 competitive foods school districts offer?

10 MS. BASHAW: I'm going to object to the
11 form of the question, misstates his testimony.

12 MR. ROBB: I'm not stating his testimony,
13 I'm asking him a question.

14 MS. BASHAW: You're misstating what he
15 told you about competitive foods.

16 MR. ROBB: Well, no.

(17) (Q.) (There are competitive foods that are)
(18) (offered at schools, right?)

(19) (A.) (In some schools.)

(20) (Q.) (As director of child nutrition here at the)
(21) (OSPI, do those competitive foods come under your)
(22) (jurisdiction, if you will?)

(23) (A.) (Some of them.)

(24) (Q.) (Some of them?)

(25) (A.) (The foods of minimal nutritional value as)

(1) defined in CF 210, appendix B.)

(2) Q. And what generally are those foods that
(3) are of minimal nutritional value?)

(4) A. Hard candy, gum, fondants, carbonated
(5) beverages. That's most of them.)

(6) Q. What source of oversight do you have over
(7) the competitive foods that school districts provide?)

(8) A. We review the school districts once every
(9) five years. We do a sampling of the schools within the
(10) district. It's called a coordinated review effort, or
(11) otherwise known as CRE, and our workpapers require us
(12) to observe to make sure that those foods that USDA says
(13) cannot be available during meal times in food service
(14) areas or where reimbursable meals are eaten are not
(15) available to the students.)

(16) Q. In other words, you can't put a vending
(17) machine with those foods in a lunchroom?)

(18) A. You can, as long as it's not operating
(19) during meal service times.)

(20) Q. In rough terms, do you have an idea of how
(21) many districts in the state offer competitive foods to
(22) their students?)

(23) A. No idea.)

(24) Q. Do you know how the revenues derived from
(25) those foods are accounted for? I'm wondering, I feel

(1) like I saw somewhere in preparation a reference to a
(2) certain percentage of the profits that school districts
(3) typically take. Is that something you're aware of?

(4) (A.) (No.)

(5) (Q.) (Are there school districts in the state
(6) that offer nutritional services to students at no
(7) charge to any student?)

(8) (A.) (Yes.)

(9) (Q.) (What are some of those districts?)

(10) (A.) (There's a provision in the USDA
(11) regulations called provision 2 and provision 3, and
(12) they are somewhat similar but somewhat different. The
(13) one district that I know for sure where I'm going this
(14) afternoon as soon as I finish this conversation is the
(15) Toppenish School District. Toppenish School District
(16) for the past six years I think have served all of their
(17) children both breakfast and lunch at no charge
(18) regardless of their eligibility status. They have
(19) implemented provision 2.)

(20) (Q.) (What does that mean to implement provision
(21) 2?)

(22) (A.) (For the first year or the base year they
(23) serve all of the children at no charge but count them
(24) in the appropriate eligibility category, free, reduced
(25) or pay, and maintain statistics month by month as to)

(1) the percentage of lunches that they serve that were
(2) falling into those three categories. So in the nonbase
(3) years, they just count the number of meals that were
(4) served and apply those like percentages created from
(5) the previous year, continue to serve the kids at no
(6) charge.)

(7) (They can do that, I don't remember)
(8) exactly, the base year plus three or base year plus
(9) four before they have to go through that cycle again.
(10) After the base year, they don't have to get free and
(11) reduced applications from parents, and it makes it very
(12) nice administratively and the kids eat free.)

(13) (Q.) (So why are you going to the Toppenish)
(14) School District this afternoon?)

(15) (A.) (Because they are receiving the USDA gold)
(16) award for the healthier US school challenge, which
(17) would be presented by USDA San Francisco regional
(18) office because they have met, far exceeded the
(19) standards for their -- it's not only nutrition, but
(20) also physical activity for their four elementary
(21) schools. One of the requirements to receive this award
(22) is that their elementary school meal participation in
(23) lunch has to be greater than -- 70 percent or greater
(24) every day.)

(25) (Q.) (So today is the award ceremony?)

(1) (A.) (Actually, tomorrow. They're going to do)
(2) (three schools tomorrow and one on Friday.)

(3) (Q.) (Earlier we were talking about the impact)
(4) (that nutrition has on test scores. Do you know if the)
(5) (test scores in Toppenish have gone up in the past six)
(6) (years?)

(7) (A.) (They have.)

(8) (Q.) (Do you attribute that in part to the)
(9) (nutrition program that they offer at the school?)

(10) (A.) (I can't make a judgment on that, too many)
(11) (variables.)

12 MR. ROBB: Let's go off the record for a
13 second.

14 (Discussion off the record.)

15 MR. ROBB: I think you're done.

16 (Deposition concluded at 11:00 a.m.)

17 (Signature reserved.)

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

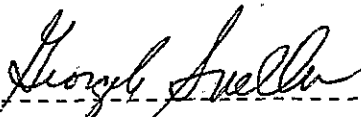
C H A N G E S H E E T

PLEASE MAKE ALL CHANGES OR CORRECTIONS ON THIS SHEET,
SHOWING PAGE, LINE AND REASON.

PAGE LINE

CORRECTION AND REASON

22-25 And ~~then~~ we have the nutrient standards ~~new~~
49-13 appropriation - this appropriation is all
 in proviso language
60-1 defined in CFR 210, appendix B



GEORGE C. SNELLER

TAKEN: June 3, 2009

Re: McCleary v. State of WA, No. 07-2-02323-2 SEA
Reporter: Margaret Walkky